

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
NO. 4:09-CV-181-D

REX T. GILBERT, JR and DANIELA L.
GILBERT,

Plaintiffs,

v.

DEUTSCHE BANK TRUST COMPANY
AMERICAS, AS TRUSTEE FOR
RESIDENTIAL ACCREDIT LOANS, INC.,
DAVID A. SIMPSON, P.C., SUBSTITUTE
TRUSTEE, RESIDENTIAL FUNDING, LLC
AND GMAC MORTGAGE, LLC,

Defendants.

**DEFENDANT DEUTSCHE BANK TRUST COMPANY AMERICAS, AS TRUSTEE FOR
RESIDENTIAL ACCREDIT LOANS, INC. SERIES 2006-QA6'S MOTION TO DISMISS
PORTIONS OF COUNT TWO AND COUNT FOUR OF PLAINTIFFS' FIRST
AMENDED COMPLAINT**

NOW COMES Defendant Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc. Series 2006-QA6¹ ("Deutsche Bank"), by and through its counsel of record, and respectfully moves this Court for an Order dismissing portions of Count Two² and Count Four of Plaintiffs' First Amended Complaint on *res judicata* grounds because these claims

¹ The Gilberts' First Amended Complaint incorrectly names Deutsche Bank as Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc.

² Deutsche Bank moves to dismiss bullet points one, two, and three of paragraph 25 of Plaintiffs' Unfair and Deceptive Trade Practices Claim against Deutsche Bank.

were previously dismissed by Judge Martin Glenn in Case No. 12-12020 in the United States Bankruptcy Court for the Southern District of New York.

WHEREFORE, for the reasons stated in Deutsche Bank's Memorandum of Law in Support of its Motion to Dismiss Portions of Count Two and Count Four of Plaintiffs' First Amended Complaint, which is incorporated herein by reference, and pursuant to Federal Rule of Civil Procedure 12(b)(6), Deutsche Bank requests that this matter be dismissed with prejudice for the reasons set forth therein.

RESPECTFULLY SUBMITTED, this the 2nd day of October, 2015.

BRADLEY ARANT BOULT CUMMINGS LLP

s/Christian W. Hancock

Christian W. Hancock (N.C. Bar No. 39259)

Bank of America Corporate Center

100 N. Tryon Street, Suite 2690

Charlotte, NC 28202

Telephone: (704) 338-6000

Facsimile: (704) 332-8858

chancock@babco.com

*ATTORNEY FOR DEFENDANT DEUTSCHE BANK TRUST
COMPANY AMERICAS*

CERTIFICATE OF SERVICE

I hereby certify that on October 2nd, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

Kathryn Parker-Lowe
35 Miss Elecia Lane, Suite 101
P.O. Box 730
Ocracoke, North Carolina 27960
ATTORNEYS FOR PLAINTIFFS

and I hereby certify that I have mailed the document to the following non CM/ECF participant:

David A. Simpson
Kellam, Simpson, Loflin & Poe
2901 Coltsgate Road, Suite 102
Charlotte, North Carolina 28211
CO-DEFENDANT

s/Christian W. Hancock